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No. 80-1663

# In the Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, Local 799, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, and T.W. GLEASON, Individually and as he is President of International Longshoremen's Association, AFL-CIO and H.R. HASSELGREN, Individually and as he is Secretary-Treasurer of International Longshoremen's Association, AFL-CIO and N.J. BOWERS, Individually and as he is Executive Vice President of International Longshoremen's Association, AFL-CIO and F.R. FIELD, JR., Individually and as he is General Organizer of International Longshoremen's Association, AFL-CIO and A. SCOTTO, Individually and as he is Regional Director of International Longshoremen's Association, AFL-CIO and J.T. MOOCK, Individually and as he is First Vice President of International Longshoremen's Association, AFL-CIO and R.A. MASSEY, Individually and as he is Second Vice President of International Longshoremen's Association, AFL-CIO and G.W. DIXON, Individually and as he is Third Vice President of International Longshoremen's Association, AFL-CIO and W.P. LYNCH, Individually and as he is Fourth Vice President of International Longshoremen's Association, AFL-CIO,

PETITIONERS,

v.

ALLIED INTERNATIONAL, INC.,

RESPONDENT.

## ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

## RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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# In the
# Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1663

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
PETITIONERS,

*v.*

ALLIED INTERNATIONAL, INC.,[1]
RESPONDENT.

## ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OR APPEALS FOR THE FIRST CIRCUIT

## RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondent, Allied International, Inc. ("Allied"), is submitting this Response to Petitioners' Petition for Writ of Certiorari

[1] Allied International, Inc. has one subsidiary, Allied International Sales Corp. In addition, the following are affiliated companies: Allied Plywood Co., Inc.; Allied Plywood Inc.; Allied Plywood Ltd.; Atlas Management Corp.; Harbor Corp.; B.R.S. Plywood Inc.

("ILA petition") pursuant to a request of the court conveyed to Respondent by letter dated May 20, 1981 from its Clerk, Alexander L. Stevas, to Respondent's attorney.

**Respondent's Positions**

Respondent, Allied, has read in the media[2] that Petitioners have recently terminated the union's Russian boycott which gave rise to the litigation in the instant case. Although Allied's immediate need for injunctive relief may therefore be lessened, damage claims arising out of the International Longshoremen's Association's ("ILA") boycott, and the nationally significant issue of preventing a recurrence of this kind of conduct by the ILA or other unions, still remain. The law is in a state of confusion as to the proper kinds of actions that may be brought to resolve a dispute over a union-instigated work stoppage motivated by that union's political disapproval of an international trade relationship, and the proper forum(s) for resolution of such a dispute. In *New Orleans Steamship Association* v. *General Longshore Workers*, 626 F.2d 455 (5th Cir. 1980), *cert. granted sub. nom. Jacksonville Bulk Terminals, Inc.* v. *ILA*, No. 80-1045, 49 U.S.L.W. 3725 (March 30, 1981), the Court has already granted certiorari to decide one facet of this overall problem, to wit:

> Does union-instigated work stoppage motivated by political disapproval of employer's international trade relationship involve 'labor dispute' within the meaning of § 4 of Norris-LaGuardia Act?

*Id.* at 3585.

However, *Jacksonville Bulk Terminals Inc.*, *supra*, involves only an action for breach of a collective bargaining agreement under Section 301 of the Labor Management Relations Act of

[2] *See, e.g.*, Wall St. J., June 4, 1981, at 1.

1947, 29 U.S.C. §185(a). See the underlying Court of Appeals opinion, *sub nom. New Orleans Steamship Association* v. *General Longshore Workers*, 626 F.2d 455 (5th Cir. 1980). It does not address the larger questions of the rights of those who are not parties to a collective bargaining agreement with the union, but who are also severely damaged by the work stoppage, or the rights of the public in general to a free flow of commerce unburdened by this sort of disruption. The employers who have collective bargaining agreements with the union instigating the disruption cannot be depended upon to protect the interests of these other persons and the public by bringing Section 301 breach of contract actions. Such employers may well decide that their own best interests are served by not resisting the work stoppage, and thus avoiding the risk of incurring the enmity of the leadership of the large and powerful international union that controls their labor supply.[3]

The issues raised in the ILA petition and in Allied's Cross-Petition for Certiorari in Case No. 80-1906, when coupled with the issues raised in *Jacksonville Bulk Terminals, Inc.*, *supra*, encompass these larger questions as well as all of the main issues that have, to the knowledge of Allied, been raised to date in litigation involving union-instigated work stoppages motivated by union political disapproval of international trade relationships. Allied submits that the interests of all involved in international trade, including even the unions, would be best served if the Court granted the petitions for certiorari, in

[3] For example, in the instant ILA Russian boycott situation, Russian cargo is but a small fraction of the total cargo passing through each of the many ports on the East and Gulf Coasts and Great Lakes whose longshoremen are represented by the ILA. Particularly if the ports are busy, the longshoremen lose little or nothing by refusing to handle Russian cargo, and their stevedoring company employers lose little or nothing. The big losers are persons such as Allied who find all of the deep water ports in the United States, other than those on the West Coast (where another union represents longshoremen), closed to their Russian imports or exports, and the public in general, who is thereby deprived of the economic advantage of Russian trade at competitive prices.

both the instant case and in No. 80-1906, in order to provide a comprehensive determination of rights and obligations in these kinds of disputes.

On the other hand, Allied would oppose the granting of the ILA's petition for certiorari in the instant case unless Allied's cross-petition in No. 80-1906 were also granted. Allied submits that any such partial treatment of the pending legal issues involved in these kinds of disputes may even worsen, rather than improve, the existing state of legal confusion as to proper procedures, forums and remedies. As described in more detail in Allied's cross-petition, No. 80-1906 at 6-10, the major differences below are with respect to the legal reasons for the unlawfulness of the ILA's Russian boycott and the proper forums and procedures for litigation of those issues, rather than with respect to whether the boycott is unlawful. Therefore, to the maximum extent possible, this confusion should be resolved in its entirety.

## Responses to Petitioners' Arguments

Allied responds to Petitioners' arguments as follows:

1. In their petition at 6-8, Petitioners argue that the decision of the court below directly conflicts with this Court's decision in *American Radio Association* v. *Mobile Steamship Association*, 419 U.S. 215 (1974) ("Mobile"). Allied sees no such conflict. Allied supports the distinction between the instant case and *Mobile* articulated by the court below. *See* ILA petition at 10a-13a. In addition, there are numerous other relevant distinctions between the two situations including, but not limited to, the following: the union conduct involved in the instant case cannot even arguably be protected by Section 7 of the National Labor Relations Act[4]; such union conduct does not involve any possibility of affecting the labor relations or labor conditions of any foreigners; and the dispute in the

[4] *See* authority cited in Allied's cross-petition, No. 80-1906 at 12.

instant case is with the cargo, rather than the ship, thus rendering irrelevant any concern over NLRB interference with "... the maritime operations of foreign vessels". *Mobile*, 418 U.S. at 228. In *Mobile*, 419 U.S. at 225 n.10, this Court specifically reaffirmed that NLRA secondary boycott provisions can apply to domestic secondary activities arising out of a primary dispute involving foreigners outside of the United States.

2. In their petition at 9-10, Petitioners argue that there is a conflict between circuits with respect to an important question of federal jurisdiction, in that the instant case is in conflict with *Baldovin* v. *ILA*, 626 F.2d 445 (5th Cir. 1980). Allied agrees that such a conflict exists and indeed, has further submitted that the conflict also encompasses *NLRB* v. *ILA*, 332 F.2d 992 (4th Cir. 1964), a case that cannot be reconciled with either *Baldovin* or the instant case. *See* Allied's cross-petition, No. 80-1906 at 6-104. Allied disagrees, however, with Petitioners' assertion that this conflict also necesssarily encompasses *National Maritime Union of America (Shippers Stevedoring Co.)*, 245 N.L.R.B. 29 (1979). Allied submits that the instant case can be distinguished from *Shippers Stevedoring* for many of the same reasons it can be distinguished from *Mobile*, even if it is assumed that *Shippers Stevedoring* was correctly decided. *See* pp. 4-5 *supra*.

3. In their petition at 10-11, Petitioners appear to argue that the well established concept that an object of a union can be determined from the foreseeable consequences of its conduct[5] should not apply to the facts of the instant case because ILA was merely "seeking to regulate its own conduct vis-a-vis the U.S.S.R." Allied submits that this ILA argument is nothing more than semantics. Otherwise, any union, anytime, anywhere, could apply that same "regulating its own conduct" rationale to justify any "hot cargo" type order it issued to its

[5] *NLRB* v. *Retail Store Employees Local 1001*, 100 S. Ct. 2372, 2377 n.9 (1980) and cases cited therein.

members not to handle products of someone with whom it had a dispute. *See* discussion by the court below; Petitioner's petition at 15-16a and cases cited therein.

4. In their petition at 12-14, Petitioners argue that there are important First Amendment issues involved in this case. Allied disagrees. Of all the forums that have considered the issue of a union-instigated work stoppage motivated by disapproval of international trade relationships, only two judges of the Fourth Circuit, seventeen years ago in *NLRB* v. *ILA*, 332 F.2d 993 (4th Cir. 1964), and the district court below, ILA petition at 22-24a[6], have concluded that such question gave rise to a First Amendment problem. Within the last year the Fifth Circuit found no such problem, *New Orleans Steamship Association* v. *ILA*, 626 F.2d at 462-63, and neither the First Circuit majority nor Judge Aldrich found any such problem below. ILA petition at 22-24a, 36-37a. Most recently, the NLRB's administrative law judge also found no such problem. ILA petition at 97a.

An analysis of the reasoning and authority of the panel majority in *NLRB* v. *ILA*, *supra*, shows the clear error of that panel majority in concluding that any First Amendment problem existed. The panel majority first erroneously equated the refusal to handle products, ordered by the union leadership, with the very distinguishable, purely voluntary, decisions of individual consumers to engage in a consumer boycott. *NLRB* v. *ILA*, 332 F.2d at 999. It then further erroneously[7] implied that such union ordered product boycotts for political reasons were "not uncommon". *Id.* It finally cited, as authority for its conclusion that First Amendment protection existed, cases involving rights of unions or civil rights organizations to provide

[6] The District Court below relied essentially upon *NLRB* v. *ILA*, *supra*. *See Walsh* v. *ILA*, 488 F.Supp. 524, 530-531 (D. Mass. 1980) *vacated and remanded with instructions to dismiss on grounds of res judicata*, 630 F.2d 864 (1st Cir. 1980).

[7] The court below correctly pointed out that such union conduct was quite rare in the United States. *See* ILA petition at 21a.

legal services, or the rights of such groups not to disclose the identity of their members, and even cited one case which held that there was insufficient evidence to support a conviction for breach of the peace. *NLRB* v. *ILA*, 332 F.2d at 999 n.6 and cases cited therein.

Obviously, none of these cases come close to supporting the proposition that a union's top leadership has a First Amendment right to wreak havoc on commerce by using the union's power to order every union member (whatever his or her individual beliefs) to refuse to handle product from some nation whose political actions are not favored by that union leadership or some factions within the union. Conduct that is more than "pure speech" is not protected by the First Amendment when the manner of expression is "basically incompatible" with the normal activity of others. *Grayned* v. *City of Rockford*, 408 U.S. 104, 116 (1972).

In sum, Allied submits that the main issue is not whether the ILA's conduct is protected by the First Amendment or is otherwise legal. Rather, the main issue is what legal theory or combination of legal theories properly define the nature and scope of its illegality.

5. Allied objects to Petitioners' statements of its Questions Presented for Review, ILA petition at i, as not fulfilling the requirements of Sup. Ct. R. 21(a). Such Rule states that the questions be expressed in "the terms and circumstances of the case" and be "short and concise and should not be argumentative or repetitious".

Thus, the terms "military aggression", and "aggressor nation" in questions Nos. 1 and 3 respectively are argumentative. Questions Nos. 3 and 5 are not consistent with the terms and circumstances of the case in that they state or imply that the refusal to handle was a result of a mass unanimous affirmative desire of all union members, rather than a result of an order from the union's president to the membership. In general, the questions are fragmented in that each is directed only to a

portion of the overall question of whether there was an unlawful statutory secondary boycott, and they tend to overlap aspects of each other. Based on the form of the statement in *Jacksonville Bulk Terminals, Inc., supra*, Allied suggests the following as a statement of a Question Presented for Review:

> Does union-instigated work stoppage motivated by political disapproval of international trade relationships violate Section 8(b)(4) of the National Labor Relations Act and Section 303 of the Labor-Management Relations Act of 1947?

## Conclusion

For the foregoing reasons, Allied submits that the ILA Petition for Writ of Certiorari should be granted, but only if Allied's Cross-Petition Writ of Certiorari, No. 80-1906, is also granted. Otherwise, it should be denied.

Respectfully submitted,

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